

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MORAVCIK/RIYAHIDEKORDI,
Minors.

UNPUBLISHED

August 13, 2013

No. 313872

Macomb Circuit Court

Family Division

LC Nos. 2010-000585-NA,
2010-000586-NA,
2012-000009-NA

Before: SAAD, P.J., and K. F. KELLY and GLEICHER, JJ.

PER CURIAM.

The trial court terminated respondent-mother's parental rights to her two older children, SM and MR, when she failed to benefit from two years of services. Because respondent has not adequately addressed her mental health and housing issues as required by her parent-agency agreement and therefore will not be able to provide a safe and stable home for the children within a reasonable time, we affirm.¹

I. BACKGROUND

On October 16, 2010, police responded to a domestic disturbance at the home of Norma Emerson, respondent's mother. Respondent and her two children lived in the second-floor apartment of Emerson's home. Respondent was already known to law enforcement because she had a history of domestic violence against her mother and her estranged husband. Respondent was uncooperative and erratic and the officers were forced to use pepper spray to subdue her. The officers transported respondent to a hospital where she was involuntarily committed for a psychiatric evaluation. A doctor diagnosed respondent as suffering from paranoid schizophrenia but respondent refused to take psychotropic medications to treat her condition. Child Protective Services (CPS) workers investigated respondent's home and found her apartment to be filthy, unsafe, unfurnished and without electrical service. Emerson secured a personal protection order against respondent, blocking her return to the residence. Respondent made no living

¹ The court declined to terminate respondent's parental rights to her young son, AR, who was born during these proceedings.

arrangements for herself or the children upon her release from the hospital and so the Department of Human Services (DHS) filed a custody petition.

SM and MR were taken into care and MR was eventually placed with his biological father, respondent's estranged husband, who lived in Washington D.C. Respondent entered a plea allowing the court to take jurisdiction over the children although she later claimed that her plea was not knowing and voluntary. Under her parent-agency agreement, respondent was required to participate in supervised visitation with her children, attend parenting classes, engage in psychological and psychiatric treatment, secure employment, and find suitable housing. As respondent had already lost custody of SM and MR, the DHS immediately took AR into care after his birth.

Over the following two years, respondent failed to meet the goals outlined by her DHS agreement. Respondent did not follow through with her doctors' recommendations to resolve her mental health issues, adamantly asserting that she was fine. Respondent's level of uncooperativeness with her four court-appointed attorneys and various caseworkers and combative stance at court hearings belies her opinion, however. As of April 2012, respondent still believed that she "did nothing wrong" leading to the children's removal. Respondent never moved beyond supervised visitation because of her negative treatment of her daughter, SM, and her inability to comprehend basic safety requirements when caring for a baby. In fact, a DHS case worker supervised the entirety of each visit at the agency "because there [had] been some concerns during the visit[s]." Respondent briefly worked for a construction company and claimed to own her own cleaning business, which apparently had only one client. Respondent gave inconsistent testimony about her income. The highest figure given, even when combined with a monthly food allowance through a Bridge Card, was insufficient to support a family of four. Respondent also never secured suitable housing. She briefly lived with her now ex-boyfriend, AR's father, in a one-bedroom apartment. She then returned to Emerson's home but made no attempt to clean or furnish her second-floor apartment, or to connect electrical service, until the eve of the termination trial. At the April 17, 2012 adjudication hearing regarding AR, respondent unrealistically described the apartment as being "a tip top home." It appears from the record that the city of Warren foreclosed on a tax lien and evicted Emerson at some point. The city or a subsequent owner allegedly agreed to allow respondent's continued residence if she provided a \$675 security deposit and \$450 in monthly rent payments. Respondent conceded that she had only \$400 in savings, making her plans unreasonable.

In the end, respondent still could admit none of her shortcomings, declaring at the termination trial, "I'm doing everything properly. The only people who say that I'm not right now is you." The main issue still plaguing respondent's reunification with the children was her mental health. As described by one witness, "I think it's the mental illness that we're talking about, the inappropriateness that she has, the fixation that she gets on certain issues, rigidity in her thinking" This prevented respondent from improving her parenting skills.

Ultimately, the trial court terminated respondent's rights to SM and MR based on a supplemental termination petition but allowed respondent additional time to work toward reunification with young AR. Respondent challenges the sufficiency of the evidence supporting the grounds for termination and argues that termination of her parental rights was not in the children's best interests.

II. STANDARD OF REVIEW

Pursuant to MCL 712A.19b(3), a trial court “may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Where the termination is based on grounds not raised in the initial petition, the court’s decision must be based on legally admissible evidence. MCR 3.977(F). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests,” the court is required by law to order termination. MCL 712A.19b(5). This Court reviews for clear error the circuit court’s determination that a statutory ground for termination has been established. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A decision “is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356. Whether termination is in the child’s best interests must be proven by a preponderance of the evidence. *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013), slip op at 3. A trial court may consider evidence on the whole record in making its best-interest determination. *Trejo*, 462 Mich at 356-357.

III. GROUNDS FOR TERMINATION

The trial court terminated respondent’s parental rights based on MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The conditions that led to adjudication were respondent's mental instability and unsuitable housing. Those conditions continued to exist through the termination trial. Respondent believed she suffered only from depression caused by the child protective proceedings and would not acknowledge her history of mental illness. Respondent eventually agreed to take Zoloft to treat depression but feigned ignorance that any psychotropic medications had been recommended following her 2010 involuntary commitment. Respondent failed to take necessary steps to ensure continual counseling services, leaving herself without care for periods of time. Respondent claims that the DHS provided inadequate services for her to meet her treatment goals. It was respondent, however, who unreasonably discontinued services with recommended providers and refused to follow up with additional resources.

Respondent did not improve her housing situation either. During the proceedings, respondent lived alternatively in her mother's home and with her boyfriend. At her mother's home, respondent lived like a hoarder amongst boxes and clutter. She did not clean her second-floor apartment, reasoning that she did not need to while the children were out of her care. The apartment was filthy with garbage and cigarette butts. Respondent had no furniture, lied to the court about the condition of her apartment, and could not coherently explain when she finally started preparing the apartment for her children's return. By the time of the termination trial, respondent was again living in her mother's home, although her mother had been evicted, and respondent could not explain how she would pay a security deposit and meet rent obligations. Given that respondent provided no plan to rectify her mental health and housing issues in the future, this evidence supported termination under MCL 712A.19b(3)(c)(i).

Respondent failed to rectify other conditions noted at adjudication, supporting termination under MCL 712A.19b(3)(c)(ii). Respondent complied by participating in ordered parenting classes, but testified that she learned nothing from the experience. The DHS caseworker offered to engage a parenting coach, who would have given respondent more intensive one-on-one instructions, but respondent refused that help. Respondent behaved inappropriately with her children. The caseworker supervising respondent's visits noted respondent's marked preferential treatment of MR over SM. The caseworker testified that respondent was overly and inappropriately critical of SM's clothing and resisted the caseworker's attempts to help respondent communicate more effectively with her daughter. Respondent was adamant that such criticism amounted to good parenting. Telephone communications were suspended because of respondent's cursing and attempts to coach the children regarding what to say to attorneys and caseworkers. The parent-child relationships deteriorated so much that SM and MR each expressed a desire to avoid contact with their mother. Over the two years of supervised parenting time, respondent was unable to consistently demonstrate appropriate parenting behavior to allow unsupervised visits.

The parent-agency agreement also required respondent to maintain a consistent and legal income source. Respondent had not had a full-time job since 2008, and her income from

cleaning houses was minimal and sporadic. Respondent never presented documentation regarding her income despite repeated requests and testified inconsistently about the amounts she earned. And despite previously admitting that nothing prevented her from working, respondent claimed for the first time at the termination trial that a wrist problem limited her lifting ability and hindered her job hunt. Again, respondent provided no plan to rectify these conditions in the foreseeable future.

These proofs similarly satisfied the other statutory grounds for termination. Respondent remained unable to properly provide for her children and keep them out of harm's way. She had more than two years to work toward achieving mental stability, acquire necessary parenting skills, locate suitable housing, and secure a consistent source of income. Respondent took no responsibility for her setbacks and failure to progress during the child protective proceedings, blaming the system, the economy, SM's foster parents, the children, and her mother. Unable to secure stable housing, respondent continued to be unable to provide proper care and custody for her children. Unwilling to fully participate in a mental health treatment plan, respondent's children would be in danger if returned to her care. Based on the legally admissible evidence, the trial court did not clearly err in finding numerous statutory grounds supporting termination.

III. BEST INTERESTS

The trial court also properly determined by a preponderance of the evidence that termination of respondent's parental rights was in SM's and MR's best interests. By the time of the termination trial, SM was 14 years old and MR was nearly 10. Both had stated preferences to remain in their placements away from their mother. While this Court has held that a trial court may not conduct an in camera interview with the children to determine their placement preference in a termination of parental rights case, *In re HRC*, 286 Mich App 444, 451-453; 781 NW2d 105 (2009), nothing prevents a trial court from considering properly obtained evidence regarding the child's preference when determining whether termination is in the child's best interests. Respondent's negative behavior during visitation with SM and her manipulative conduct during telephone contacts with both children further supported that the continued relationship was not healthy for the children.

Respondent argues that it would be in SM's and MR's best interests to allow her additional time to comply with her treatment plan. During the two-year child protective proceeding, however, respondent showed minimal progress due to her unwillingness to acknowledge her areas of concern. Respondent was defensive and accusatory even at the termination trial. The court had no reason to assume that respondent would improve her condition given additional time.

Respondent also argues that the best-interest determination must be reversed because, she claims, the trial court did not make an explicit best-interest finding regarding MR's placement with his father as required under *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). In *Olive/Metts*, this Court remanded for further proceedings because the trial court did not expressly address the fact that the two youngest children were residing with a paternal relative. In this case, the trial court, guided by the Child Custody Act, MCL 722.23, clearly articulated 12 factors it considered in determining MR's best interests and explicitly addressed the placement with his father. MR was happy in his father's stable and secure home and was doing well in

school. The trial court specifically noted that the desirability to maintain continuity in the child's living environment was a factor that weighed against respondent. Further, in considering whether the family unit would provide this child with permanency, the court noted that respondent and the boy's father had lived apart for approximately four years and both intended to file for divorce. The father did not intend to return to Michigan, and even telephonic communication between respondent and MR had been suspended because of respondent's manipulative behavior. Thus, the trial court created an adequate factual record to support its findings that terminating respondent's parental rights was appropriate.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher